



**Arbitration CAS 2021/A/7760 André Onana v Union des Associations Européennes de Football (UEFA), award of 4 October 2021 (operative part of 10 June 2021)**

Panel: Mr Jordi López Batet (Spain), President; Prof. Ulrich Haas (Germany); Mr Romano Subiotto QC (United Kingdom)

*Football*

*Doping (furosemide)*

*Utmost caution*

*Degree of fault*

*Assessment of fault*

1. To succeed with a plea of **“No Fault or Negligence”**, an athlete must show that he or she used **“utmost caution”** to keep him- or herself clean of any prohibited substances, *i.e.* that the athlete did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he or she had ingested the prohibited substance. The athlete must show that he or she has fully complied with this **“duty of utmost caution”**, that is, that he or she has made every conceivable effort to avoid taking a prohibited substance and that the substance got into his or her system despite all due care on his or her part.
2. There are three categories of degree of fault: significant degree of or considerable fault, normal degree of fault and light degree of fault. The CAS panel must determine in which category belongs the fault and the sanction range corresponding to it, to deliver the appropriate sanction to be imposed on the athlete.
3. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete’s situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.

## **I. PARTIES**

1. Mr. André Onana (“Mr. Onana”, the “Player” or the “Appellant”) is a Cameroonian professional football player who renders his services for Ajax FC.
2. Union des Associations Européennes de Football (“UEFA” or the “Respondent”) is the governing body for the sport of football in Europe.

## **II. BACKGROUND FACTS**

3. The elements set out below are a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the exhibits produced as well as the evidence examined in the course of the proceedings. Additional facts and allegations may be set out, where relevant, in connection with the ensuing legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, in its award reference is made only to the submissions and evidence the Panel considers necessary to explain its reasoning.
4. On 30 October 2020, Mr. Onana underwent an out-of-competition anti-doping control. In the relevant Doping Control Form (“DCF”), he did not declare having taken any medications or supplements in the last 7 days.
5. The laboratory that analyzed the Player’s urine sample reported an Adverse Analytical Finding (“AAF”) indicating the presence of Furosemide, a prohibited substance included in the 2020 WADA Prohibited List. In particular, Furosemide is included in Section S5 Diuretics and Masking Agents of the 2020 WADA Prohibited List, and, as such, is a specified substance in accordance with the referred List.
6. On 18 November 2020, the UEFA administration notified the AAF to the Player, informed him of his right to have the B Sample analysed, and invited Mr. Onana to provide an explanation for the AAF.
7. On 20 November 2020, the Player communicated to UEFA that he had no explanation for the AAF, but that he would discuss it with his club’s doctor to see what could have caused such AAF and requested the analysis of the B Sample.
8. On 4 December 2020, UEFA notified the Player that the result of the B Sample analysis confirmed the presence of Furosemide in his urine.

## **III. PROCEEDINGS BEFORE THE UEFA APPEALS BODY**

9. On 8 December 2020, UEFA notified the Player that disciplinary proceedings were opened against him for a potential violation of the UEFA Anti-Doping Regulations (“UEFA ADR”).
10. On 9 December 2020, the Chairman of the UEFA Control, Ethics and Disciplinary Body decided to refer the disciplinary case directly to the UEFA Appeals Body given the urgent need for the Player to receive a decision.
11. On 4 February 2021, the UEFA Appeals Body, after having gone through the written submissions filed both by the Player and the UEFA Ethics and Disciplinary Inspector and after the relevant hearing being held in the case, rendered the following decision:

1. *To suspend the AFC Ajax player Mr André Onana for twelve (12) months, starting from the date of the notification of the decision (i.e. 4 February 2021) and ending on 4 February 2022, for committing an anti-doping rule violation.*
  2. *To reject the player's request for a stay of execution of the above-mentioned suspension.*
  3. *That there are no costs in these proceedings to be paid by the parties.*
12. In a nutshell, the UEFA Appeals Body considered that an Anti-Doping Rule Violation (“ADRV”) was established by the presence of Furosemide in the Player’s urine (article 3.01 (a) UEFA ADR), but also that (i) this ADRV was not intentional, (ii) the Player established how Furosemide entered his body and (iii) as per the explanations given by the Player and the evidence taken, the Player’s fault or negligence was not significant in relation to the ADRV. Taking this into consideration and after analyzing the objective and the subjective level of the Player’s fault, the UEFA Appeals Body decided to sanction the Player with a 12-month suspension (i.e. half of the base sanction of 2 years established in article 13.01.(b) UEFA ADR, this reduction being based on article 14.02 UEFA ADR -no significant fault or negligence-).
13. On 15 February 2021, the grounds of this decision were notified to the Parties.

#### IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 5 March 2021, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against UEFA with respect to the decision rendered by the UEFA Appeals Body on 4 February 2021 (the “Appealed Decision”). In its Statement of Appeal, the Player appointed Mr. Ulrich Haas as arbitrator, requested the procedure be conducted in an expedited manner and submitted the following prayers for relief:

“16. *Mr. Onana requests this Hon. Court to declare jurisdiction over the present dispute, to accept the present appeal and to annul the Decision of the UEFA Appeals Body of 4 February 2021 on the grounds to be further elaborated upon to CAS in the Appeal Brief of Mr. Onana.*”

17. *UEFA is ordered to bear all procedural costs and other arbitration expenses of this procedure”.*

15. On 10 March 2021, UEFA sent a letter to the CAS informing that it did not agree with the Player’s request for an expedited procedure.

16. On 17 March 2021, the Player filed its Appeal Brief, seeking the following relief:

*“On the basis of the foregoing, we hereby request the **COURT OF ARBITRATION FOR SPORT (APPEALS ARBITRATION DIVISION)** to deem this **APPEAL BRIEF** to be filed on behalf of **Mr. ANDRÉ ONANA**, together with the copies thereof and the documents thereto, and following the appropriate procedures, **this party respectfully requests this Hon. Panel to issue, in due course, a RULING whereby:**”*

**A.- The Appeal is upheld and the Decision** adopted by the Appeals Body of the Union des Associations Européennes de Football (UEFA) on February 4<sup>th</sup>, 2021 (notified on February 15<sup>th</sup>, 2021) (Disciplinary Case 34193) is set aside and replaced by a new decision which:

- i) Declares that there is no fault or negligence on the part of Mr. ANDRÉ ONANA **and therefore the twelve (12) month suspension period is lifted.**
- ii) **Alternatively,** declares that Mr. ANDRÉ ONANA bears no significant fault or negligence, **and therefore:**
  - a. **The sanction is reduced to a reprimand and no period of suspension;**
  - b. Subsidiarily, **the period of suspension is reduced to four (4) months.**
- iii) **Alternatively and additionally,** in the event that the Player is sanctioned with any period of suspension, then **to replace the sanction of the prohibition on exercising any football-related activity with the sanction of a match ban (applicable to official matches played at any level) for the applicable period of sanction.**

*In all cases:*

**B.-** The Respondent shall bear ***all the procedural costs*** of the present proceeding.

**C.-** Finally, the Respondent shall compensate **Mr. ANDRÉ ONANA** for the ***costs and the legal fees*** incurred in connection with this arbitration in an amount to be determined at the discretion of this Hon. Panel in accordance with **Article R65(3)** of the CAS Code”.

17. On 18 March 2021, UEFA appointed Mr. Romano Subiotto QC as arbitrator.
18. On 7 April 2021, UEFA filed its Answer, in which it requested the CAS to issue an award:
  - (i) *Dismissing Mr. Onana’s appeal and all prayers for relief*
  - (ii) *Upholding the Decision of the UEFA Appeals Body of 4 February 2021 in Mr. Onana’s anti-doping proceedings.*
  - (iii) *Condemning Mr. Onana to pay a contribution towards UEFA’s legal fees and other expenses, which will be quantified following the closure of the proceedings*
19. On 13 April 2021, on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present dispute had been constituted as follows:

President: Mr. Jordi López Batet, Attorney-at-law in Barcelona, Spain.

Arbitrators: Mr. Ulrich Haas, Professor and Attorney-at-law in Zurich, Switzerland.

Mr. Romano Subiotto QC, Avocat in Brussels, Belgium and Solicitor-Advocate in London, UK.

20. On 20 April 2021 and at the request of the CAS Court Office in its letter of 16 April 2021, the Appellant filed submissions providing further comments on the relevance and expected testimony of two of the witnesses proposed in its Appeal Brief (Mr. Van der Sar and Mr. Vermeer) and waiving the declaration of other two witnesses (Mr. Overmars and Mr. Ten Hag).
21. On 30 April 2021, after consultation with the Parties, the CAS Court Office informed them that, pursuant to Article R57 of the CAS Code, the Panel had decided to hold a hearing in this case.
22. On 25 May 2021, the CAS Court Office issued the Order of Procedure of this case, which was duly signed by the Parties.
23. On 2 June 2021, a hearing was held by video-conference in these proceedings. The Player, assisted by an interpreter, and his counsels (Mr. Dolf Segaar, Mr. Javier Ferrero Muñoz, Mr. Íñigo de Lacalle Baigorri and Mr. Ivo Trijbits) attended the hearing, as well as the counsels to UEFA (Prof. Dr. Antonio Rigozzi, Mr. Arturo Galván and Ms. Brianna Quinn). Mr Giovanni Maria Fares, CAS counsel, assisted the Panel at the hearing. After the Parties' opening statements, the Parties and the Panel examined Mr. Onana, and thereafter the witnesses Dr. Niels Wijne, Mr. Erwin van der Sar and Dr. Ngatchou Djomo William were also heard. The Appellant waived the declaration of the witnesses Ms. Melanie Onana and Mr. Roy Vermeer. Finally, the Parties made their respective closing statements and were offered the opportunity for a rebuttal. At the outset of the hearing, the Parties confirmed that they had no objections with regard to the constitution and composition of the Panel, and, at the end of the hearing, all the Parties expressly declared that they did not have any objections with respect to the procedure.
24. On 10 June 2021, the CAS Court Office communicated the operative part of this award to the Parties as requested by the Player with the acquiescence of the Respondent.

## **V. SUBMISSIONS OF THE PARTIES**

25. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each contention put forward by them. However, in considering and deciding upon the Parties' claims, the Panel, has carefully considered all the submissions made and the evidence adduced by the Parties, even if there is no specific reference to those submissions in this section of the award or in the legal analysis that follows.

### **A. The Player**

26. The Player's submissions, in essence, may be summarized as follows:

- (i) The AAF derives from a chain of unexpected misfortunes: the Player ingested a pill of a medicine containing Furosemide (Lasimac), which had been prescribed to his wife after having given birth to the couple's first child, in the belief that he was taking a pill of Litacold (a medicine he has been taking for years with the doctors of his club and his national team's previous knowledge and acquiescence) to treat a febrile discomfort and headache on 30 October 2020 in the morning, right after a Europa League match he played the night before in Bergamo (Italy). The Player and his family stored their medicines in a box with 3 compartments inside (one for the Player, one for his wife and one for the couple's children). Before leaving for a trip to the United States and under the stress of such trip, the Player's wife (who was pregnant at that time) mistakenly stored some strips of Lasimac, which are similar to those of Litacold, in the Player's compartment of the family's medicine box and the Player took one of these Lasimac pills wrongly stored in his compartment, trusting that he was taking a pill of Litacold.
- (ii) Lasimac's ingestion by the Player was thus inadvertent and, in any event, its potential doping effects were inexistent, as acknowledged by the scientific expert consulted by UEFA.
- (iii) As a result, the Player acted with no fault or negligence and no sanction of suspension should therefore be imposed on him: even with the utmost caution that Mr. Onana could have exercised, he could not have known, expected or suspected that Lasimac had been mistakenly stored by his wife in the Player's medicine box compartment.
- (iv) If the Panel considers that the sanction should not be eliminated based on no fault or negligence, the sanction imposed by the Appealed Decision should be substantially reduced as the Player's degree of fault was not significant. It has been established (i) that the Player's ADRV was not intentional and how Furosemide entered the Player's body (in fact, UEFA does not challenge this) and (ii) that the Player's degree of fault was at best light. Therefore, the sanction imposed, which is additionally disproportionate and abusive, should be reduced to a mere reprimand or subsidiarily, to a period of suspension of 4 months, taking into account the CAS and other courts' precedents in similar matters.
- (v) Alternatively and additionally, in the event the Player is sanctioned with any period of suspension, the Player requests this sanction to be replaced by the prohibition on exercising any football-related activity with the sanction of a match ban applicable to official matches for the period of sanction, given the impact that the sanction of suspension would have on his ability to exercise his profession.

## **B. UEFA**

27. UEFA's submissions, in essence, may be summarized as follows:

- (i) It is not disputed that UEFA has established an ADRV of presence in accordance with the UEFA ADR.

- (ii) UEFA does not challenge in these proceedings that the source of the Player's AAF was his ingestion of his wife's medication (Lasimac) and accepts that it cannot prove to the standard of comfortable satisfaction that the Player intended to use Furosemide.
- (ii) This being said, UEFA considers that the Player's request for elimination of the sanction based on no fault or negligence must be rejected, as he did not exercise the utmost caution in using medication contained in a loose blister package in his family's medicine box, nor in the way he stored (and did not disclose the use of) his own medicines. Had Mr. Onana simply stored his own medicines in a separate place, it is next to impossible that the situation that took place herein would ever have arisen. The same would have happened if the Player had read the label of the loose blister package of Lasimac, which he failed to do.
- (iii) The sanction imposed by the Appealed Decision should not be further reduced based on no significant fault or negligence in light of the circumstances of the case. Following the CAS jurisprudence on No Fault or Negligence (CAS 2013/A/3327 & 3335 *et alia*), from an objective perspective the Player's conduct falls in the "normal" degree of fault, given that particular care should be applied in cases of self-medication and that the Player was at least expected to read on the strip the name of medicine he ingested, which would have prevented him from using the wrong medicine. From a subjective perspective, Mr. Onana is an experienced player with extensive doping education who at the time of ingesting the wrong pill, was not suffering from a high degree of stress or from any language or environmental difficulty. In addition, the sanction does not entail a comparative disadvantage with other cases and is not grossly disproportionate or unlawful as sustained by Mr. Onana.
- (iv) Under the UEFA ADR, there is no scope to amend the sanction of suspension to a match ban, as requested by the Player.

## VI. JURISDICTION

28. Article R47 of the CAS Code provides the following:

*"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. [...]"*

29. Article 62 of the UEFA Statutes reads as follows:

*"Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration"*.

30. Article 20.02 of the UEFA ADR (ed. 2018) stipulates in the pertinent part the following:

*"A decision that an anti-doping rule violation was committed, a decision imposing consequences or not imposing consequences for an anti-doping rule violation, or a decision that no anti-doping rule violation was committed;"*

*a decision that an anti-doping rule violation proceeding cannot go forward for procedural reasons (including, for example, prescription); a decision by WADA assigning results management under Article 7.1 of the Code; a decision by UEFA not to bring forward an adverse analytical finding or an atypical finding as an anti-doping rule violation or a decision not to go forward with an anti-doping rule violation after an investigation under these regulations; a decision to impose a provisional suspension as a result of a provisional hearing; a decision that UEFA lacks jurisdiction to rule on an alleged anti-doping rule violation or its consequences; a decision to suspend, or not suspend, a period of suspension or to reinstate, or not reinstate, a suspended period of suspension under paragraph 14.03a (substantial assistance); a decision under paragraph 18.03 (violation of the prohibition on participation during suspension); and a decision by UEFA not to recognise another ADO's decision under Article 21 (Application and recognition of decisions) may be appealed against exclusively as provided in Article 20. a) The decisions listed above may be appealed against exclusively to CAS”.*

31. Para. 52 of the UEFA's Answer reads as follows:

*“The jurisdiction of the Panel and the admissibility of Mr. Onana's appeal are not a matter of dispute between the Parties”.*

32. The Parties have expressly recognized the jurisdiction of CAS by signing the Order of Procedure of these proceedings.

33. Therefore, in accordance with article R47 of the CAS Code and the provisions cited above, CAS has jurisdiction to decide the present matter.

## **VII. ADMISSIBILITY**

34. Article R49 of the CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.*

35. Article 20.05 of the UEFA ADR (ed. 2018) reads as follows:

*“20.05 The time to file an appeal to CAS is 21 days from the date of receipt of the motivated decision in an official UEFA language by the appealing party. The above notwithstanding, the following applies in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed against:*

*a) Within 15 days from notice of the decision, such party has the right to request a copy of the case file from the body that issued the decision.*

*b) If such a request is made within the 15-day period, the party making such request has 21 days from receipt of the file to file an appeal to CAS”.*



36. The grounds of the Appealed Decision were notified to the Player on 15 February 2021, and the Statement of Appeal was filed on 5 March 2021, hence within the 21-day term established by the applicable regulations.

37. In addition, para. 52 of the UEFA's Answer reads as follows:

*“The jurisdiction of the Panel and the admissibility of Mr. Onana’s appeal are not a matter of dispute between the Parties”.*

38. It follows that the appeal is admissible.

### **VIII. APPLICABLE LAW**

39. Article R58 of the CAS Code reads as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

40. Both the Player and UEFA consider that the present dispute shall be decided in accordance with the UEFA ADR edition 2018 (which was the one in force on the day of the ADRV, not being the edition of 2021 more favourable than the edition of 2018 in the case at hand), and that Swiss law shall be applied on a subsidiary basis, on which Panel also concur taking into consideration the circumstances of the case.

41. Therefore, the present dispute will be resolved according to the UEFA ADR edition 2018, and where necessary, the Panel will subsidiarily apply Swiss law.

### **IX. MERITS**

#### **A. Introduction**

42. In accordance with the facts in dispute and the request for relief submitted by the Parties to the Panel, the main issues to be resolved in this award are the following:

- i. Should the sanction of suspension be eliminated based on no fault or negligence of the Player?
- ii. If not, should the 12-month suspension imposed in the Appealed Decision be reduced based on the Player's no significant fault or negligence?

- iii. Should a sanction of suspension, if finally imposed, be amended to a match ban as requested by the Player?

**B. Elimination of the sanction based on no fault or negligence**

43. The Player's main request is the elimination of the 12-month suspension based on article 14.01 UEFA ADR, which reads as follows:

*"14.01 Lifting the period of suspension where there is no fault or negligence*

*If a player or other person establishes in an individual case that he bears no fault or negligence, then the otherwise applicable period of suspension is lifted".*

44. The Player accepts the AAF and that an ADRV of presence of a prohibited substance (Article 3.01 UEFA ADR) has taken place, but considers that he has established in this specific case that he bore no fault or negligence on the basis of the explanations set out in para. 26 (i) above, and that hence, the period of suspension imposed on him should be lifted.
45. In this respect, the Panel will start its analysis of this petition by checking the concept of no fault or negligence established in the Definitions of the UEFA ADR:

*"No fault or negligence: If the player or other person establishes that he did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he had used or been administered a prohibited substance or prohibited method or otherwise violated an anti-doping rule. Except in the case of a minor, for any violation of paragraph 3.01a, the player must also establish how the prohibited substance entered his system".*

46. In the present case, it is accepted by the Parties how Furosemide entered the Player's system (inadvertent ingestion of a pill of Lasimac), so this prerequisite is considered established by the Panel just like it was by the UEFA Appeals Body in the Appealed Decision.
47. The Panel will then examine whether the Player has established that he did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he had used Furosemide or otherwise violated an anti-doping rule. As mentioned in the award CAS 2011/A/2518, **to succeed with a plea of "No Fault or Negligence", an athlete must show that he or she used "utmost caution" to keep him- or herself clean of any prohibited substances, i.e. that the athlete did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he or she had ingested the prohibited substance (CAS 2006/A/1025, para. 11.25; CAS 2005/C/976 & 986, para. 74). The athlete must show that he or she "has fully complied" with this "duty of utmost caution" (CAS 2005/C/976 & 986 at para. 74), that is, that he or she has "made every conceivable effort to avoid taking a prohibited substance" (CAS 2005/A/847 at para. 7.3.1) and that the substance got into his or her system "despite all due care" on his or part** (emphasis added by the Panel).

48. After having analyzed the evidence brought to the proceedings, and in particular the declaration of the Player at the hearing, the Panel concurs with the UEFA Appeals Body that there is no reason justifying a finding of no fault or negligence leading to the elimination of the sanction.
49. Even if the Panel accepts (i) the uncontested explanation given by the Player on the origin of the AAF and (ii) that there are some similarities regarding the packaging of the strips of Litacold and Lasimac, which probably contributed to the Player's confusion, it also considers that the Player should have checked and read the content of the strip before taking the pill to ascertain which medicine was contained in it, as this was not an extremely demanding task. This due care exercise was, in the Panel's view, even more to be expected taking into account that the Player took the pill directly from a loose strip, not from strips contained inside their original box.
50. In addition, the Panel considers that the way the Player stored his medicines at home could certainly be improved, to say the least: having all the family medicines in a common box, with separate compartments for each family member/group of members with no label distinguishing them and open and accessible at least by both the Player and his wife, cannot be considered in the present case, in the Panel's opinion, as an exercise of utmost caution either. The explanations given by the Player on this at the hearing came to confirm this understanding of the Panel, which agrees with the Appealed Decision on the fact that the Player could have secured and stored his medicines better.
51. Finally, the fact of the Player not disclosing in the DCF that he had taken, on the same day as the doping control, the medicine he thought was Litacold, reinforces and confirms the Panel's opinion that the Player's conduct does not qualify for the elimination of the period of suspension based on article 14.01 UEFA ADR.
52. Therefore, the main petition of the Player in his Appeal Brief is rejected.

### **C. Reduction of the sanction based on no significant fault or negligence**

53. On a subsidiary basis, the Player is requesting a reduction of the period of suspension imposed by the Appealed Decision on the basis of article 14.02.a).1 UEFA ADR, which reads as follows:

*“Reducing the period of suspension based on no significant fault or negligence*

*a) Reducing suspensions for violations under paragraph 3.01a (presence of prohibited substance or its metabolites or markers), 3.01b (use or attempted use of a prohibited substance or prohibited method), or 3.01f (possession of a prohibited substance or prohibited method) involving specified substances or contaminated products.*

*i) Specified substances*

*Where the anti-doping rule violation involves a specified substance, and the player or other person can establish no significant fault or negligence, then the minimum sanction is a reprimand and no period*

*of suspension and the maximum sanction two years of suspension, depending on the player's or other person's degree of fault".*

54. The Appealed Decision applied this article in the determination of the sanction finally imposed on the Player. After acknowledging that an ADRV (presence of Furosemide, a specified substance, in the Player's sample) was established and that this ADRV was not intentional (on which all the Parties to these proceedings agree), the UEFA Appeals Body analyzed if the base sanction of 2 years of suspension arising out of it in accordance with Article 13.01 UEFA ADR had to be reduced based on the Player's no significant fault or negligence, and concluded that the Player could benefit from such a reduction in light of the degree of fault attributable to him in the matter at hand. In consequence, a period of suspension of 12 months (half of the base sanction) was imposed on the Player.
55. To address the request for further reduction of the period of suspension made by the Player, the Panel will firstly take into account the concept of no significant fault or negligence established in the Definitions of the UEFA ADR:

*"No significant fault or negligence: If the player or other person establishes that his fault or negligence, when viewed in the totality of the circumstances and taking into account the no fault or negligence criteria, was not significant in relation to the anti-doping rule violation. Unless he is a minor, for any violation of paragraph 3.01a the player must also establish how the prohibited substance entered his system".*
56. The Panel firstly notes in this respect that it is uncontested by the Parties (i) that the source of the Player's AAF was the ingestion of a Lasimac pill, (ii) that - the prerequisite established in the last part of the definition of no significant fault or negligence in the UEFA ADR has been met, and (iii) that the Player bore no significant fault or negligence in the case at stake.
57. The Parties disagree on the consequences of such no significant fault or negligence: while the Player considers that it should enable the Player to benefit from a further reduction of the sanction imposed (reprimand or at least a lesser period of suspension), UEFA claims that the Appealed Decision and the sanction (12 months of suspension) is correct and consistent with the relevant regulations and comparable jurisprudence, and that it is neither disproportionate nor abusive and does not imply any comparative disadvantage to the Player.
58. To resolve this discrepancy the Panel will take as a starting point that article 14.02 UEFA ADR stipulates that when an ADRV involves a specified substance and the player can establish no significant fault or negligence (which is the case here), the minimum sanction to be imposed on the Player is a reprimand and the maximum sanction is of 2 years of suspension, depending on the player's fault.
59. The Appealed Decision concluded that the appropriate sanction to be imposed on the Player taking into account the degree of fault attributable to him was of 12 months of suspension. The UEFA Appeals Body, following some CAS-related jurisprudence in this respect (*inter alia*, CAS 2013/A/3327 & 3335, CAS 2017/A/5015 or CAS 2018/A/5739), considered three general categories of degree of fault in cases of this kind (greater degree of fault -16 to 24 months of

suspension-, normal degree of fault -8 to 16 months of suspension- and light degree of fault -0 to 8 months of suspension-) and analyzed the objective and subjective level of fault of the Player in order to establish (i) in which of the three mentioned categories this particular case should fall, and (ii) within this category and the sanction range corresponding to it, which was the appropriate sanction to be imposed on the Player. For the sake of illustration, the Panel recalls the following considerations made in the award CAS 2013/A/3327 & 3335, in particular those referred to what is considered the objective and the subjective element of the fault:

69. *The breadth of sanction is from 0 – 24 months. As Article 10.4 says, the decisive criterion based on which the period of ineligibility shall be determined within the applicable range of sanctions is fault. The Panel recognizes the following degrees of fault:*

1. *Significant degree of or considerable fault.*
2. *Normal degree of fault.*
3. *Light degree of fault.*

70. *Applying these three categories to the possible sanction range of 0 – 24 months, the Panel arrive at the following sanction ranges:*

1. *Significant degree of or considerable fault: 16 – 24 months, with a “standard” significant fault leading to a suspension of 20 months.*
2. *Normal degree of fault: 8 – 16 months, with a “standard” normal degree of fault leading to a suspension of 12 months.*
3. *Light degree of fault: 0–8 months, with a “standard” light degree of fault leading to a suspension of 4 months.*

71. *In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete’s situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.*

72. *The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.*

73. *The subjective element can then be used to move a particular athlete up or down within that category.*

74. *Of course, in exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however.*

60. The way, just described, of analyzing the Player's degree of fault, and of determining the sanction, followed by the UEFA Appeals Body is in the Panel's view adequate and completely reasonable, and the Panel will follow the same path and line of reasoning in this award.
61. This being said, the Panel, after analyzing the submissions filed by the Parties, their oral allegations at the hearing and the evidence taken, concurs with the UEFA Appeals Body's approach on the objective element of fault and with the subsequent qualification of the Player's degree of fault as "Normal" (that is to say, neither "High/Great" nor "Light", in accordance with the 3 categories mentioned above), for the reasons explained in the Appealed Decision: taking all the circumstances surrounding the case into account, the Panel is also of the view that, even if it is accepted that the Player took a Lasimac pill by mistake (he mistook it for a Litacold pill) to alleviate his cold, headache and fever symptoms, and that this was due to an unfortunate error of his wife in the storage of her medicines in the family medicine box, it is no less true that the Player did not read the medicine's name on the medicine's loose strips he took, which would have prevented him from taking the wrong pill.
62. This "Normal" degree of fault would trigger, in accordance with the CAS jurisprudence referred to above, a suspension for a period from 8 to 16 months, and within this range, the Panel notes that the UEFA Appeals Body, having examined the subjective element of fault in the case at hand, imposed on the Player a suspension of 12 months.
63. The Panel has also analyzed the subjective element of fault in the matter at stake and the reasoning followed by the Appealed Decision in this respect, and concludes that the suspension period should be reduced to 9 months, which in the Panel's view, is the appropriate and proportionate period of suspension to be imposed on the Player taking into account all the circumstances of the case, for the reasons set out below.
64. The Panel notes in this respect that the UEFA Appeals Body, in the Appealed Decision, *"carefully considers the subjective element of fault, [...] which may include the assessment of the following: the athlete's youth and/or inexperience; the environmental problems encountered by the athlete; the extent of anti-doping education received by the athlete; and any other "personal impairments" such as those suffered by (i) an athlete who has taken a certain product over a long period of time without incident; (ii) an athlete who has previously checked the products' ingredients; (iii) an athlete who is suffering from a high degree of stress; (iv) an athlete whose level of awareness has been reduced by a careless but understandable mistake"* (para. 81 of the Appealed Decision), and that applying these principles to the matter at stake, the UEFA Appeals Body understood that (i) on one hand, Mr. Onana was an experienced player with anti-doping education at the time the facts occurred, who did not disclose in the DCF having taken Litacold and took such medicine in a situation of no particular stress, but (ii) on the other hand, that Litacold was a medicine the Player had been taking for years without incidents and subject to checking this with his club and national team's doctors. It is on this basis that the UEFA Appeals Body imposed a sanction of 12 months of suspension to the Player (i.e. in the middle of the range 8-16 months).
65. Without prejudice to what is stated below, the general assessment conducted by the UEFA Appeals Body on the subjective element of the Player's fault is, in the Panel's view, in line with

CAS jurisprudence (*inter alia*, CAS 2013/A/3327 & 3335) and as a matter of principle, is shared by the Panel. Where the Panel's approach to this matter differs from that of the UEFA Appeals Body concerns the weight to be given to the "personal impairments" of the Player in the determination of the exact sanction to be imposed on the Player within the 8-16 months range.

66. In the Panel's opinion, such "personal impairments" should have had a further mitigating impact in determining the sanction. In particular, the Panel stresses that Litacold and Lasimac's strips are not identical, but somehow similar in size and colour (grey is predominant in both), and that Litacold is a medicine which had been prescribed to the Player by his National Team doctor, and that had been taken by him for a long time to alleviate the symptoms of headache and cold, without incidents and with the full knowledge of his club's doctor. The witnesses Dr. Wijne (doctor at Ajax FC) and Dr. William (from the medical department of the Cameroon Football Association) confirmed at the hearing that Litacold had been prescribed to the Player and that he took it when the mentioned symptoms appeared. Therefore, even if, as mentioned above, the Panel considers that the Player was careless in storing the medicines in a box with his wife and children's medicines and could have paid more attention or been more diligent by at least reading the medicine's name on the strip, his mistake in these concrete circumstances (ingesting Lasimac thinking that it was Litacold due to an error of his wife's storage) could be understandable: the Panel finds it not abnormal that strips of Litacold were usually stored in the Player's medicine box and that the Player perceived no danger in having them there due to his more or less regular consumption of Litacold and this, together with the fact that the Lasimac strips are somehow similar, probably contributed to his confusion.
67. These circumstances, in the Panel's opinion, justify a further but slight reduction in the suspension, which is also in line with some CAS precedents that present similarities with this case, in which the sanction imposed on the athlete was less than a 12-month suspension. In particular, the Panel highlights the award rendered in the case CAS 2012/A/2756, in which the AAF was also due to a confusion between medicines within the family environment. In that case, the athlete (who unlike in the present case, was a healthcare professional) was suspended for a period of 6 months for an ADRV of presence. The same less stringent approach in the determination of the level of fault and its consequences may also be found in CAS 2013/A/3327 & 3335 (4 months of suspension) or in CAS 2017/A/4643 (10 months of suspension). The Panel is of course aware that other CAS awards on No Significant Fault or Negligence have imposed sanctions of suspension that are higher than 9 or 12 months, but having considered them (in particular, those cited by the Respondent in its Answer), the Panel finds no compelling reasons to deviate from its conviction that a 9-month suspension is adequate here. In particular, concerning case CAS 2018/A/5739, which was analyzed by UEFA in its Answer and which also refers to the inadvertent ingestion of Furosemide by an athlete due to a confusion with a headache medicine, the Panel points out that there are reasons justifying different outcomes between the two cases: specifically, in that case the athlete did not live with his family, but alone, with friends and acquaintances often visiting his rental home and staying there from time to time (so that the environment of trust is not comparable), the athlete's mistake was provoked by someone, who did not even live in the house (not by the athlete's couple) and had access to the place where medicines were stored and the athlete knew that his roommate consumed the medicine, whose inadvertent ingestion finally caused his AAF.

68. Therefore, the Panel has decided to reduce the period of suspension imposed on the Player to 9 months, starting from 4 February 2021.
69. For the sake of completeness and addressing the alternative and additional request made by the Player to replace this sanction of suspension by a match ban (applicable to official matches played at any level) for the applicable period of the sanction imposed, the Panel stresses that this request is untenable in light of the regulations applicable to this case. The sanction imposed to the Player (suspension) is the one foreseen in the UEFA ADR for ADRVs of presence, which do not provide that this sanction can be substituted by a match ban based on the reasons argued by the Player. Therefore, such alternative and additional request of the Player is dismissed.

## DECISION

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by Mr. André Onana against the decision rendered by the UEFA Appeals Body on 4 February 2021 (Ref. Nr. 34193\_tho) is partially upheld.
2. The decision rendered by the UEFA Appeals Body on 4 February 2021 is confirmed, with the exception of point 1 of its operative part, which is modified as follows:  
  
*To suspend the AFC Ajax player Mr André Onana for nine (9) months, starting from the date of the notification of the decision (i.e. 4 February 2021) and ending on 3 November 2021, for committing an anti-doping rule violation.*
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.